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# THE HISTORY OF DENIZATION AND NATURALIZATION IN THE COLONY OF RHODE ISLAND

1636-1790

BY

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# THE HISTORY OF DENIZATION and NATURALIZATION IN THE COLONY OF RHODE ISLAND 1636—1790

I am asked to set forth the Rhode Island law of Naturalization in effect before the adoption, by Rhode Island, of the Constitution of the United States; that is, previous to 1790. By the word naturalization is meant, the conferring of the rights, and privileges, of a native subject, or citizen, of a Colony, or State, upon a foreigner who comes to dwell therein. Rhode Island had no such laws. The men who planted Providence, and then the Colony, held from the first the power of admitting citizens to these incorporations, and of conferring upon these citizens the rights of Freemen; as a matter of fact, no foreigner applied. In order to a correct understanding of the working, it will be necessary to describe briefly the planting of the towns, and the kind of a government which followed. Roger Williams came here in 1636. Within a few months, he saw, by the numbers coming here to settle," that some kind of government was necessary to be established. He formulated a plan, in his own mind, and in 1637, submitted a draft of it, to Gov. Winthrop. This plan consisted of a signed Union, between the first planters and a compact, to be signed by all who came after, and were admitted. The government rested in the fixed inhabitants; no "tramp" was admitted. A man must be

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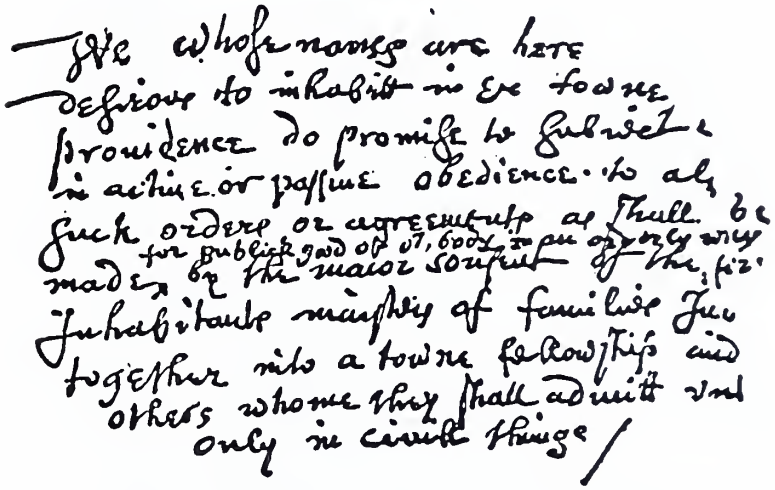
a Master of a Family before being made a voter, or Freeman, as the people then called a fixed inhabitant, to whom was given political rights. These fixed inhabitants incorporated themselves into a body politic; and each promised active, or passive obedience to the laws; which laws were to be enacted by a majority of the present inhabitants (Prov. Early Rec. 1, 1). Here is the fac-simile of the original compact, in the hand writing of Roger Williams:


We whose names are here
desirous to inhabit in ye towne
Providence do promise to submit e
in active or passive obedience to all
such orders or agreements as shall be
made for publick good of ye body in an orderly way
by the major consent of the fa:
Inhabitants masters of families Incu
together into a towne fellowship and
others whome they shall admitt unto
only in civill things /

The original compact between the first Proprietors is not in existence, but Mr. Williams' proposed form still exists (Williams' Letters, Narr. Club, Pub. 6, 5). The four original towns were all settled upon a like foundation with Providence. This latter town was the first town planted upon these principles, in this country; or indeed in the world. It was a purely democratic government of the people, by the people, for the people. A purely civil government, having no control over any man's religion. Roger Williams followed this work by obtaining a Charter of Colonial government, in 1643. He was himself the sole author of this charter. It was a purely democratic government, with absolute religious liberty. The first in the world

ever so established; and to-day, not a town, nor city, nor state, in this country, exists upon any other principle. The people were given in this charter "full power to govern, and rule themselves, and such others as shall hereafter inhabit within any part of the said tract, by such form of *civil* government, as by voluntary consent of all, or the greatest part, shall be most serviceable, in their estates, and condition" (R. I. Hist. Soc. Coll. 4, 224). The full power of denization, or naturalization, was in the People, under this charter. The people of the towns, admitted men, as citizens, to vote upon the town affairs, and for town officers; and when these People from all the towns, assembled at Newport, or elsewhere, and acted as a General Assembly of the whole body, these men who had been admitted by the towns, were admitted by the Colony, with power to vote upon Colonial affairs, and for Colonial officers. In 1647, when this Parliamentary charter was adopted and set in operation, all free inhabitants were obliged to "set their hands to an engagement to it" (R. I. Col. Rec. 1, 147). From the first moment of planting, the ownership of land was a prime factor in the creation of an inhabitant, with political power (Prov. Early Records 1, 1). In 1645-6, a grant of twenty-five acres of land was made to many men who desired to dwell here; but were unable to purchase land. These grants did not confer the rights of a freeman. At a later period, in 1666, Deeds were given of these lands (Prov. Early Rec. 15, p. 229). Four years later, in 1670, these men were made politically equal to the original proprietors (Prov. Early Rec. 15, 130). There was never a case of

naturalization under the Charter of 1643. The Charter of Charles the Second came in 1663. It created the boundaries of Rhode Island precisely as now existing. But it took nearly a century to wrest these lands from the surrounding colonies. A colonial body politic was created, with power to admit inhabitants to such political rights as they themselves possessed; and all such others as now (in 1663), or hereafter may be admitted, are made Free of the Company (Charter, Digest of 1719, p. 2). I cite the Charter in this Digest, because here it was printed for the first time. I now touch certain political changes which developed in process of time under this Charter. In 1665, the King of England sent a commission to arrange certain troubles in New England. The commission suggested (stating it to be the will of his majesty) that every Freeman, before admission, must have a "competent" estate; and must be of civil conversation; and acknowledge and obey the Civil Magistrate; and all Householders, and Freemen were to swear an oath of allegiance. With the exception of this oath, no change in political conditions was made. Everything suggested by the King had been the practice of the people from the first planting (R. I. Col. Rec. 2, 110). This was a grant, not of power to the General Assembly, but *"to this corporation"* (R. I. Col. Rec. 2, 111). An oath was provided, under the action of the entire body of Freemen; and sworn by every Freeman, in the years 1666 and 1667.

Primogeniture in the descent of estates was introduced into the colony by Benedict Arnold, the first Governor un-

der the charter of 1663, at the time of his father's death, in 1676. It was done for the purpose of getting his father's property into his own possession, there being five children, of whom he was the eldest. In 1723-4, a change was made, eldest sons were to have a double portion. This change lasted but a year, when the law was made to divide all equally. But there came into use a political primogeniture. The eldest son of a Freeholder was given the political franchise, without land or other property, while the younger sons could not be admitted without land; no amount of personal property would make a second son a Freeman, nor give him a right in the courts, as a plaintiff (Digest 1730, p. 131). This political primogeniture continued until the revolution of 1842, commonly called the Dorr War. In the first Digest of Laws there exists a statute "Declaring the Rights and Privileges of His Majesty's Subjects." This statute prevented Roman Catholics from being admitted Freemen of the Colony (Digest of 1719, p. 3). The legislative fraud in connection with this statute has been clearly set forth by the present writer, in another place (Hist. Introd. Digest of 1719, p. 15, 16). This introduction of primogeniture was a direct violation of the charter. The fundamental title to lands in Rhode Island were thus fixed by the charter of 1663. "To be holden of us, our heirs, and successors, as of the Manor of East Greenwich, in our County of Kent, in *Free and Common Soccage*, and not *in capite*, nor by Knights service." (Charter Dig. 1719, p. 7.) No such action, as taking all lands by the eldest, did then, nor ever exist in the County of Kent,

in England (Lambard's Perambulations, 1656, p. 584, 586, 594). Gov. Arnold appeased the discontents of the people by giving Town Councils the power to make wills, certainly extraordinary work.

I come now to the question of Naturalization. I have already stated that there is no Law on the Statute book. But there was a *practice,* which I will now attempt to set forth. The earliest case at present known to the writer, was that, by the Town Meeting at East Greenwich, granting "Letters of Denization" to Daniel Ayrault, on the third day of July, in the 13th year, of William the Third (1701). The late Judge Elisha R. Potter has preserved it. (R. I. Hist. Tracts, 1st sec. 5, p. 105). Unfortunately the original record has been lost, probably by a costly preservation of the ancient record. There is no record, at present, to be found, covering the time, from 4 March, 1700, to April 9, 1702. The entire year, the 13th of William 3rd, is gone. I wish to note the difference in action between this case, and those which preceded, or followed it. Pardon Tillinghast was *admitted a Freeman* by the town meeting of East Greenwich, in 1699. Hugh Bayley, and Thomas Briggs *"are excepted Freemen of this town,"* 8th April, 1702. But Ayrault was granted "Letters of Denization." The charter of 1663, as I have stated, was first printed, in the Folio Digest, of 1719. Marginal notes were affixed to it, and these notes were continued in all the Folio Digests from 1719 down to 1767, which latter date, was the only book of statutes, until 1798. One of these marginal notes is given as "The Clause of Indenization" (p. 7.) The King, ordained, declared,

and granted, unto *Governor and Company,* that all, and every, subject of us, our heirs and successors, already planted, and settled, in our Colony of Providence Plantations; or shall hereinafter go to inhabit within the said colony, and all their children, born there, or elsewhere "shall have and enjoy all Liberties, Immunities of free and natural subjects, born within the realm of England." (Charter Digest 1719, p. 7.) By this clause the *Governor and Company* were given powers to grant Denization, and of course, Naturalization. But "denization" could not be enforced in the case of an English subject; but could be enforced in the case of a Foreigner, and Ayrault was a Foreigner, one of the French Huguenots, whose father came here in 1686. "An alien may become an English subject in two ways, by Denization, and by Naturalization; Denization by the King's Letters receivse him into the Company, as a new man, capable to purchase and transmit lands, but he *could not inherit lands.*" (Bacon's Abgt. 1, 79.) This fact was doubtless the cause of this action by East Greenwich. Daniel Ayrault, was a son of Pierre Ayrault, one of the French Huguenots, who bought lands in that town. The entire Colony denied the validity of the titles of these Huguenots to the Lands which they supposed they had bought of certain Massachusetts men. A person granted Denization could not himself inherit; but his children could inherit; and this was precisely the case with Ayrault. He removed a few years later to Newport, where with no further action, he was admitted to all the political privileges of a Freeman, and was a subject of the English crown. I have shown that the power of

Naturalization; or the admission of Freemen; and of course of Denization, lay in the *Governor and Company*, and hence not in the General Assembly; but that body usurped the power about 1753. and it was also usurped by the Superior Court. There were eleven Foreigners naturalized by the General Assembly between the years 1753-1766. In each case a specific statute was enacted. Stephen Decatur, grandfather of Commodore Decatur, born at Geneva, a Swiss, but a subject of the French King, Feb., 1753, a Frenchman; Peter Moriall, a Frenchman, Aug., 1753; Ami Decotay, a subject of Geneva, Feb., 1754; Christian Mayer, native of Luxemburg in Germany, May, 1755; Nicholas Batter, as his name appears in the printed books; but in the original manuscript it is "Ignatius," "a subject of his most Christian Majesty," May, 1756; John Auriel. "subject of his most Christian Majesty," June, 1756; Guillaume Albrespry, "a subject of the French King," August, 1756; James Lucena, a Portuguese, Feb., 1761; John Morall, a Spaniard, Aug., 1762; Pierre Le Roy, " a subject of his most Christian Majesty, June, 1763; James Van Gilst, a "subject of the States General," the Netheralnds, June, 1766. These apparently covered the business, so far as the General Assembly was concerned, until after the Revolution. Lucena was naturalized, because he pretended that he could make "Castile Soap." But a large number were naturalized to save their necks, while serving upon Privateers, sailing from Newport during the French wars, then existing. The presumption is fair, that the General Assembly gave no regard to the law, then standing upon the statute book

(Digest 1744, 5), under which a Roman Catholic was debarred from being admitted a Freeman. Nor did the General Assembly make any use of the "Clause of Denization" in the Charter; or were these men Spanish, and Portuguese Protestants? Concerning every one of these naturalizations there exists the taint of money. Mr. Arnold thus describes the policy of the colony: "It was a close corporation and has ever remained so; the right to be admitted a Freeman, or even to be naturalized, was purely a civil one, depending upon the views, that Town Councils; or the General Assembly; or the Courts might take of the merits of each case." (Arnold's Hist. R. I., 2, 406.) It might be inferred from this statement, that the rights of a Freeman, exceeded the rights of a naturalized citizen, but such is not the case; and, again, he is in error—Town Councils had no power to act in such cases. He is certainly correct, as to its being "a close corporation, and has ever remained so." This attitude of the colony towards foreigners clearly appears in a statute enacted in 1728, imposing a fine, or tax, upon any foreigner who attempted "trading" in the Colony (Digest of 1730, p. 159). A statute was enacted in 1729, to prevent shipmasters from bringing foreigners into the Colony; a Bond for Fifty pounds, with security, was required from every shipmaster, who landed a foreigner. This statute was re-enacted in 1767, in the Digest of that year. Here by antithesis I note the views of Francis Bacon. He seems to have been the first to use the word "Naturalization" in its present meaning in 1612-1625. I will give his views: "All States that are liberal of naturalization towards strangers

are fit for Empire." (Bacon's Essays, 187.) "The Spartans were a nice people in point of naturalization" (Essays 187.) "Never any state was, in this point, so open to receive strangers into their body as were the Romans; their manner was to grant naturalization, which they called *jus civitatis*." (Essays, 188) Now comes Spain, most significant of all, "Spain had not the usage to naturalize liberally; yet they had what was next to it; to employ almost indifferently all nations, in their militia of ordinary soldiers" (Essays 188). I resume, in March, 1789, Samuel Elam, a Jew, presented a petition to the Assembly, stating that he came from Leeds, England; but since the Peace he had dwelt in the United States; and now desired to become a citizen of Rhode Island; and prayed this Assembly to pass an Act for his naturalization. The Assembly enacted "that the said Samuel Elam, be, and he is hereby naturalized, and declared a citizen of this State." Upon taking an oath, "he shall be entitled to all the Rights, Liberties, Privileges, and Immunities of a natural, freeborn, citizen of this State" (Acts & Resolves, March, 1789, p. 11. This act took place about the 10th day of the month. The question turns upon the power of the General Assembly to grant naturalizations at that time. It was done March 10. On the 4th of March, 1789, the U. S. Constitution, having been adopted by nine states, went into effect. Rhode Island had not ratified it; but it was Constitution of the United States. Rhode Island was one of the United States, she never having seceded.

At this session, the General Assembly naturalized an English subject, John

Stanford. If, at the time, the General Assembly was acting under the charter of Charles the Second, it could not naturalize an English subject.

The printed Records contain no reference to the Stanford case, but it can be found in the manuscript Record for March, 1789; nor does it appear in the *Index to the Acts and Resolves.* It was a direct violation of the charter. An English subject did not, under the charter, require naturalization to become a citizen of Rhode Island; consult the subject "Indenization,' in the Charter of 1663 (Laws of R. I. 1719, p. 7). By this act the General Assembly admits that the Charter of 1663 had ceased to exist, and to give English subjects the rights of citizenship here. It also naturalized a Jew; which was a direct violation of the English Statutes, which provided "that a Jew upon residing seven years in any of the American colonies without being absent above two months at a time, shall, upon taking the oaths of allegiance, and adjuration, or on affirmation, be naturalized to all intents and purposes as if they had been born in this Kingdom, except as to sitting in Parliament; holding offices; or grants of Land (Blackstone's Com. cp. 10, v. 1, 395.) In direct conflict with these conditions, the General Assembly, not the people, proceeded to elect Elam, a senator of Rhode Island. The action of the General Assembly in this naturalization of a Jew, Elam, was in direct conflict with a Decree of the Superior Court. This was the case.

In 1762 two Jews, Aaron Lopez and Isaac Elizar, petitioned the Superior Court for naturalization. The petition was denied on the ground that "no per-

son who does not profess the Christian religion can be admitted free of this colony" (Records Superior Court at Newport, Book E, p. 184).

This was indeed the law of Rhode Island, in accordance with the law first printed in the Digest of 1719. The statute provided that "all men professing Christianity * * * shall be admitted Freemen." But there was never a man, naturalized, nor admitted Free, who was asked, do you profess Christianity? It was a dead letter from the moment of its appearance. This law was in direct conflict with the fundamental principle on which the Colony was founded. I affirm that all the liberty of conscience that ever I pleaded for, turns upon these two hinges, that none of the papists, protestants, Jews or Turks, be forced to come to the Ship's prayers or worship, nor compelled from their own particular prayers or worship if they practice any." (Letters of Roger Williams, p. 279.)